IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 685 OF 2007

Shramik Mahasangh .....Petitioner.

V/s

M/s. Hindustan Composite Limited. .....Respondent.

Ms. Jane Cox for the Petitioner.

Mr. M.M. Verma with Mr. Rajesh Gehani for the Respondent.

CORAM: V.M. KANADE, J.
DATE : 2nd April, 2007

P.C:-

1. Leave to amend.

2. Rule.

3. Rule is made returnable forthwith by consent of the Parties. Respondent waives service.

4. Heard the learned Counsel for the Petitioner and the learned Counsel for Respondent.

5. The Petitioner - Shramik Mahasangh takes exception to the order passed by the Tribunal in Reference (IT) No. 71 of 1997 whereby the Petitioner's application for production of documents has been rejected by the Tribunal.

6. The Reference was made to the Industrial Tribunal after the Petitioner raised charter of demands on behalf of the workmen from the Respondent - Company, who were employed in its factory at Ghatkopar. After the State Government referred the matter to the Industrial Tribunal, a statement of claim was filed in the Reference. Written Statement was filed by the Company in the year 1998. On 24/11/2005, the Petitioner addressed a letter to the Company requesting it to supply information for the purpose of preparing a comprehensive chart in respect of list of workmen on the roll for the purpose ascertaining actual burden on the Company as on 01/06/1994 and other information was also sought from the Company. Since no reply was filed by the Company, an application was preferred before the Tribunal praying for production of the information

and documents.

7. The Tribunal, however, was pleased to reject the said application primarily on the ground that the Petitioner had raised charter of demands and, as such, the Petitioner was presumed to have knowledge and information and data to justify its demands and in support of its demands the Petitioner has already adduced its evidence.

8. The learned Counsel appearing on behalf of the Petitioner submitted that for the purpose of ascertaining actual financial burden on the Company, it was essential to have information regarding the workmen who were employed on the date of demand i.e. on 01/06/1994 and that, at that time, there were about 800 workmen on the roll of the Company and, during the intervening period, the number of workmen was reduced to 215 and, therefore, it was essential to know the basic wage and grade as on 01/06/1994 of each workman who was on the roll of the said Company, the data of joining and actual/due date of retirement of each workman on the said date. She

submitted that it was the duty of the Tribunal to assess the financial burden that would be cast on the employer and, for that purpose, it was essential that all the information be placed before the Tribunal, so that maximum financial burden could be ascertained accurately. It is submitted that the Petitioner is a Union which was formed in the year 2003 and, therefore, it did not have requisite information of the 600 workmen who had retired, expired or had left the employment of the Company.

9. The learned Counsel appearing on behalf of the Respondent - Company, on the other hand, submitted that in the reply of the Company to the application, it was categorically stated that the Company did not have information about each and every workman and, therefore, it was not in a position to furnish the information as demanded by the Petitioner. Further, it is submitted that the application itself was not maintainable as it amounted to fishing and roving inquiry and as an attempt to procure the evidence. It is further submitted that, earlier, application was filed by the Petitioner seeking information regarding

various other documents and that the Company had promptly supplied those documents to the Petitioner. It is submitted that only after the evidence of first witness was over, this application has been preferred. The learned Counsel appearing on behalf of the Respondent vehemently urged that it was not open for the Petitioner to now seek production of documents particularly when the Tribunal has already recorded the evidence of the first witness. He relied upon the Division Bench Judgment of this Court in the case of The 20th Century-Fox Corp. (India) (P) Ltd Vs. F.H. Lala and others reported in **1974-II-LLJ 156** in support of his submission.

10. It is no doubt true that the present application has been filed belatedly. In fact, the Petitioner had an ample opportunity to make similar application and seek information earlier. It is also true that the information which is demanded pertains to the year 1994. However, in my view, the finding recorded by the Tribunal regarding the presumption of the necessary information and data with the Petitioner cannot be accepted particularly because the

Tribunal has not taken into consideration the fact that the Petitioner - Union was formed as late as 2003. In the present case, the Petitioner - Company has not come out with the case that the financial burden is beyond the capacity of the Company. However, in cross-examination of the first witness a suggestion has been made to the said witness that the burden on the Company is to the tune of Rs 6 crores. This clearly suggests that the Company, therefore, was aware and had information about the financial burden which would be cast on the Company if the charter of demands is accepted. Ultimately, it is the duty of the Tribunal to ascertain factually and accurately as to what would be the financial burden on the Company and, accordingly, either accept or reject the demands made by the Union. For this purpose, it is essential that whatever information is available should be allowed to be produced by the parties. In the instant case, the Union, since it has been formed recently in 2003, it does not have necessary information. In my view, therefore, the Tribunal has erred in rejecting the application of the Petitioner - Union.

11. In the result, the impugned order is set aside. The application filed by the Petitioner - Union is allowed. The Respondent - Company is directed to produce the documents as prayed for by the Petitioner in its application. It is open for the Respondent - Company to file its reply alleging that they either have or do not have the documents as requested by the Petitioner in which case it is open for the Tribunal to pass an appropriate order. With these observations Writ Petition is allowed. Rule is made absolute accordingly.

(V.M. KANADE, J.)